



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Bannum, Inc.

File: B-270640

Date: March 27, 1996

David A. Lowry for the protester.

Granette Trent, Esq., Department of Justice, for the agency.

Jacqueline Maeder, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency reasonably excluded protester's proposal from the competitive range as technically unacceptable under solicitation, which gave primary weight to technical factors, including facility, where, in addition to the numerous deficiencies in the protester's technical proposal, the facility proposed by the protester would require major renovations to meet the solicitation requirements and these renovations could not be completed within the required 60-day commencement time frame.

DECISION

Bannum, Inc. protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 200-278-SC, issued by the Bureau of Prisons (BOP), Department of Justice, for residential comprehensive sanction center services for male and female federal offenders in the New Orleans, Louisiana area. Bannum asserts that BOP improperly evaluated and eliminated its proposal from the competitive range without conducting discussions with the protester, and that BOP has de facto debarred Bannum from competing for government contracts.

We deny the protest.

The RFP, issued May 22, 1995, requested offers on a firm, fixed-price basis for estimated requirements, for a base year with three 1-year options. The statement of work (SOW) required offerors to furnish the necessary facilities, equipment, and personnel to provide for the safekeeping and program needs of federal offenders residing at a New Orleans, Louisiana, facility to be furnished by the contractor, known as a community corrections center, or halfway house. The RFP required that the facility be in a suitable area, have access to public transportation, be equipped to handle the handicapped, and meet life/safety standards as provided by the National Fire Protection Association (NFPA). Among other things, the

solicitation required that the offeror's proposed facility have, at a minimum, "one operable toilet for every ten residents, one shower (or bathing area) for every eight residents, and one wash basin for every six residents." The RFP also required the contractor to "deter and detect introduction or use of alcohol in the facility" and to administer guidelines to prevent substance abuse and to support existing abusers in their recovery within the facility. The solicitation required that the offeror's facility be fully operational and ready for use within 60 days after the date of contract award.

Section M.5 of the RFP listed the following evaluation criteria, in descending order of importance: technical (including reports/policy/procedures, facility, and overall programs approach), cost, and management (including personnel/staffing and experience/structure). The RFP indicated that the technical evaluation would focus on the proposed facility's suitability, age, condition, location, and compliance with NFPA life/safety standards; documentation and procedures; and how well the offeror's technical proposal described the offeror's operational procedures in achieving the SOW requirements. Under the management factor, the RFP advised that proposals would be evaluated on such things as the capability of the offeror's management; qualifications and past experience; standards, job descriptions and position responsibilities; and employment policies and practices, and personnel and conduct standards.

Three offerors, including Bannum, submitted proposals in response to the solicitation. After evaluating the proposals, the source selection evaluation board (SSEB) made a competitive range determination and eliminated two of the proposals—including Bannum's—from further consideration. The agency excluded Bannum primarily on its determination that Bannum's proposed facility was unacceptable and could not be appropriately renovated within the required 60 days after award. The contracting officer notified Bannum of its proposal's elimination from the competitive range and this protest followed.

Bannum protests that BOP did not adhere to the RFP's evaluation scheme and improperly excluded its proposal from the competitive range. In reviewing protests against an agency's technical evaluation and decision to eliminate a proposal from consideration for award, we review the record to determine whether the agency's judgments were reasonable and in accordance with the listed evaluation criteria and whether there were any violations of procurement statutes or regulation. SoBran, Inc., B-258983, Feb. 27, 1995, 95-1 CPD ¶ 115. For the reasons set forth below, we find that the agency's technical evaluation in this case was reasonable and consistent with the evaluation criteria, and that the agency's determination to eliminate the protester's proposal from further consideration was unobjectionable.

Based on our review of the record, the evaluators reasonably downgraded the protester's proposal under both the technical and the management factors because

of Bannum's failure to address numerous matters called for by the RFP. For example, as to the technical factor, the SSEB found that Bannum did not provide written personnel policies, adequately address sign-in/sign-out procedures, or indicate that it would properly collect a required percentage of employed residents' weekly gross income. Bannum did not provide a copy of a food service contract for the food services to be provided under the RFP or evidence that its proposed catering contractor had a valid state or local license or that the catering contractor met state and/or local health and sanitation codes. Bannum also did not provide a written policy for receipt, recording, and safeguarding of funds. Regarding management, Bannum's staffing patterns did not reflect an adequate staff-to-resident ratio and its staffing was inappropriate for a facility with both male and female residents. Based on telephonic contacts concerning Bannum's past experience on similar projects, the agency was advised that as to two previous contracts, Bannum's performance was rated average to poor.

Bannum's proposal was further severely downgraded as to its proposed facility based on a preliminary site visit on September 29, 1995, with a Bannum representative present. Bannum proposed a two-story, vacant structure in a commercial/industrial/residential area approximately 6 miles from downtown. During the preliminary site visit, the evaluators found major deficiencies related to the condition and location of the facility, and significant contradictions between what Bannum had proposed and the current state of the facility. For example, although Bannum's proposed floor plan shows male residents housed on the second floor and female residents on the first floor, with bathrooms with the required number of toilets, showers, and wash basins to be added, the existing structure was a "shell" with only one toilet and one wash basin available. The hot water heater was too small for the anticipated number of residents and there were no washers, dryers, or telephones available. The facility did not provide access to the handicapped and renovations would be required for group meeting, visiting, indoor recreation, and counseling spaces. The evaluators believed that although the required 83 beds could be accommodated by the facility, quarters would be cramped. As to life/safety standards, the evaluators found that the facility did not conform to NFPA requirements for lack of a sprinkler system, "exit" and emergency lighting signs, fire-proof interior doors, protected electrical plugs, displayed fire-evacuation diagrams, and fire barriers for pipes, conduits, cables, wires, and air ducts.

The evaluators also found major deficiencies concerning the location of Bannum's proposed facility. Although the facility was only 6 miles from downtown, on a major thoroughfare, and near bus transportation routes, it was next to a night club, and within walking distance of several establishments selling beer, liquor, and wine. There were few restaurants in the area and the evaluators saw neighborhood graffiti which they believed was indicative of gang activity.

Based on the number and scope of the deficiencies relating to the facility, the SSEB did not believe that the facility could be renovated to meet the specifications of the solicitation within the required 60 days of receipt of award. The SSEB also believed the location was poor, given its close access to alcoholic beverages and possible gang activity. Based on these findings, the SSEB reduced Bannum's facility score to zero, and determined that, because of the location and condition of Bannum's proposed facility, its offer was technically unacceptable and incapable of being made acceptable.

The record, including the agency's videotape of the preliminary site visit, clearly shows that the agency's evaluation of Bannum's proposal was reasonable and consistent with the solicitation evaluation scheme. Not only does Bannum's technical and management proposals contain the numerous deficiencies described above, but the facility Bannum proposed is, as the agency notes, a mere "shell," requiring complete interior renovation, extensive plumbing and wiring for the bath additions, the installation of bathroom fixtures and proper lighting, painting, the addition of appropriate fire protection and safety features and furnishings, including recreational equipment, and significant clean-up. These deficiencies are of sufficient magnitude that the agency could reasonably conclude that major renovations would be required and that it was unlikely that such renovations could be timely accomplished. Although Bannum disagrees with the agency's assessment of its proposed facility, it does not specifically dispute the deficiencies noted by the agency. Rather, Bannum argues that it could have completed the required renovations in 60 days; that graffiti is not always indicative of gang activity; and that almost any neighborhood has access to alcoholic beverages. The protester's mere disagreement with the evaluation and BOP's ultimate conclusion to exclude Bannum's proposal from the competitive range does not establish that the evaluation was unreasonable or that the exclusion was improper. See Transportation Research Corp., B-231914, Sept. 27, 1988, 88-2 CPD ¶ 290. Based on our review, Bannum's proposal was reasonably eliminated from the competitive range.

The protester also contends that there is a history of bias against Bannum at BOP and that BOP officials have de facto debarred Bannum from competing for government contracts. Bannum alleges that approximately 6 years ago, a BOP program auditor stated that "[she] would do her best to see that [Bannum's] contracts in the Southeast are closed down," that she and her supervisor were "tired of [Bannum's] rhetoric" and that she was going to "nail [Bannum] to the wall." Bannum also alleges that BOP improperly challenged Bannum's small business size status and its responsibility. According to the protester, these actions evidence that BOP procurement officials are biased against Bannum and have de facto debarred or suspended the firm from competing for government contracts. Bannum's arguments have no merit in the present case, inasmuch as the record establishes that the agency properly eliminated Bannum's proposal from consideration under

this RFP pursuant to the evaluation criteria rather than because of a de facto debarment.¹

The protest is denied.

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¹We note that Bannum has filed suit in the United States District Court for the Western District of Tennessee, seeking, among other things, a permanent injunction against BOP from conducting a debarment, de facto or otherwise, of Bannum. We also note that in Bannum, Inc., B-249758, Nov. 24, 1992, 92-2 CPD ¶ 373, the protester made basically the same allegation, citing identical comments allegedly made by the BOP program auditor and BOP's referral of Bannum to the Small Business Administration; we found no evidence to support Bannum's allegation of de facto debarment in that case.